

BARTHEL & BARTHEL, APC

Nicholas Barthel, Esq. (319105)

nick@barthelbarthel.com

2173 Salk Ave., Ste. 250

Carlsbad, CA 92008

Telephone: (760) 259-0033

Facsimile: (760) 536-9010

[Additional Counsel May Appear on Signature Page]

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MARTINA HAMILTON and NOAM
SHIMLER,

Plaintiffs,

v.

COINBASE, INC.,

Defendant.

Case No.

COMPLAINT

JURY DEMANDED

Martina Hamilton and Noam Shimler, Plaintiffs herein, by their attorneys,
allege and complain of Defendant Coinbase, Inc. as follows:

PRELIMINARY STATEMENT

1. On or about December 21, 2022, someone unknown to Plaintiffs made multiple unauthorized transactions that drained Mr. Shimler's Coinbase account (the "Account") of approximately \$47,000 (the "Stolen Funds").

1 2. Plaintiffs immediately and repeatedly advised Coinbase, Inc.
2 (“Defendant” or “Coinbase”) that the transactions were unauthorized.

3 3. Congress passed the Electronic Funds Transfer Act, 15 U.S.C. §§
4 1693 *et seq.* (EFTA) specifically to protect consumers in circumstances such as
5 these. State laws provide them with similar protections.
6

7 4. Nevertheless, despite its obligation under federal and state laws to
8 promptly credit Mr. Shimler’s account in full, Coinbase refused to credit Mr.
9 Shimler’s account for the unauthorized transactions.
10

11 5. Plaintiffs therefore bring claims against Coinbase for violations of the
12 Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* (“EFTA”); Article 4A of
13 the California Uniform Commercial Code (“UCC”); California Business &
14 Professions Code § 17200, *et seq.*; Conversion; and breach of contract.
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17 **JURISDICTION AND VENUE**

18 6. The Court has jurisdiction pursuant to 15 U.S.C. § 1693m and 28
19 U.S.C. § 1331.
20

21 7. Supplemental jurisdiction exists for the state law claims pursuant to
22 28 U.S.C. § 1367.
23

24 8. Jurisdiction over Plaintiffs’ claim for declaratory relief is conferred by
25 28 U.S.C. § 2201.
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1 9. Venue is proper in this District because Defendant resides in this
2 District, a substantial part of the events and occurrences underlying this litigation
3 occurred within this District, and Defendant regularly conducts business here.
4

5 **PARTIES**

6 10. Plaintiffs are natural persons and citizens of United States, residing in
7 Fresno, California.
8

9 11. Plaintiffs are “consumers” as defined by the EFTA, 15 U.S.C. §
10 1693a(6). Their account with Coinbase was used for personal, family, or household
11 purposes.
12

13 12. Coinbase, Inc. is a “financial institution” formed under the laws of the
14 United States and was, at all times relevant to this Complaint, a financial institution
15 as defined by the EFTA, 15 U.S.C. § 1693a(9).
16

17 13. Coinbase’s headquarters and principal place of business are located in
18 San Francisco, California.
19

20 **FACTS**

21 14. Plaintiffs opened a Coinbase account under Mr. Shimler’s name. Both
22 Ms. Hamilton and Mr. Shimler use and own the account.
23

24 15. On or about December 21, 2022, the value on Mr. Shimler’s Coinbase
25 account was approximately \$47,000.
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1 16. On or about December 21, 2022, Plaintiffs received a call from a
2 woman purporting to be a representative from Coinbase. The caller knew many
3 details about Plaintiffs and their account with Coinbase, and Plaintiffs therefore
4 assumed that the person calling was a legitimate Coinbase representative.
5

6 17. The apparently fraudulent “Coinbase representative” informed
7 Plaintiffs that there have been several breach attempts on the account and told them
8 to reset the password. They did so.
9

10 18. Later that same day, Plaintiffs noticed that the account had been
11 drained. They called Coinbase immediately to report the unauthorized transactions.
12

13 19. On or about December 21, 2022, Plaintiff filed a report with the
14 Internet Crime Complaint Center, a Police Report and an FBI report.
15

16 20. To date, Plaintiffs have not been able to access the account.
17

18 21. To date, Coinbase has not restored the Stolen Funds to Plaintiffs’
19 account.
20

21 **FIRST CLAIM FOR RELIEF**
22 **(Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*)**
23

24 22. Plaintiffs reallege each of the foregoing paragraphs of this Complaint
25 as if fully set forth herein.
26

27 23. Per the EFTA, Regulation E, and Regulation E’s Official
28 Interpretations, Defendant bears the responsibility for unauthorized transfers and
withdrawals such as the ones in question.

1 24. Pursuant to 15 U.S.C. § 1693g(a), “Unauthorized electronic fund
2 transfers; limit” states in relevant part as follows:

3 In no event. . . shall a consumer's liability for an
4 unauthorized transfer exceed the lesser of-

5 (1) \$50; or

6
7 (2) the amount of money or value of property or services
8 obtained in such, unauthorized electronic fund transfer prior
9 to the time the financial institution is notified of, or
10 otherwise becomes aware of, circumstances which lead to
11 the reasonable belief that an unauthorized electronic fund
transfer involving the consumer's account has been or may
be effected.

12 25. This cap is increased to \$500 dollars where the consumer waits more
13 than two business days after becoming aware of the unauthorized transaction to
14 notify the financial institution. 15 U.S.C. 1693g(a)(2).
15

16 The rules are elucidated in Regulation E, 12 C.F.R. § 1005.6(b):

17 (b) Limitations on amount of liability. A consumer's liability
18 for an unauthorized electronic fund transfer or a series of
19 related unauthorized transfers shall be determined as
follows:

20
21 (1) Timely notice given. If the consumer notifies the
22 financial institution within two business days after learning
23 of the loss or theft of the access device, the consumer's
24 liability shall not exceed the lesser of \$50 or the amount of
unauthorized transfers that occur before notice to the
financial institution.

25 (2) Timely notice not given. If the consumer fails to notify
26 the financial institution within two business days after
27 learning of the loss or theft of the access device, the
28

1 consumer's liability shall not exceed the lesser of \$500 or the
2 sum of:

3 (i) \$50 or the amount of unauthorized transfers that occur
4 within the two business days, whichever is less; and

5 (ii) The amount of unauthorized transfers that occur after the
6 close of two business days and before notice to the
7 institution, provided the institution establishes that these
8 transfers would not have occurred had the consumer notified
9 the institution within that two-day period.

10 26. The EFTA places the burden of proof on the financial institution to
11 demonstrate that challenged transfers were authorized. 15 U.S.C. § 1693g(b).

12 27. Defendant cannot meet its burden of proof here, where Plaintiffs:

- 13 a. Promptly disputed the transactions;
- 14 b. Have no criminal history
- 15 c. Have no history of filing false disputes; and
- 16 d. The thefts are inconsistent with Plaintiffs' pattern of use.

17 28. Defendant also violated the EFTA by failing to provide any
18 meaningful explanation of the grounds upon which it relied in denying Plaintiffs'
19 claim. 15 U.S.C. § 1693f(d). See CFPB Supervisory Highlights, Issue 22, Summer
20 2020, Section 2.3.3 ("Financial institutions must go beyond just providing the
21 findings to actually explain or give the reasons for or cause of those findings.").

22 29. As a direct and proximate result of Defendant's conduct, Plaintiffs
23 have suffered actual damages, including but not limited to past and future
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1 monetary loss, past and future mental distress, emotional anguish, and other
2 damages that will be presented to the trier of fact.

3 30. On information and belief, Defendant did not conduct a good faith
4 investigation regarding the stolen funds.
5

6 31. Defendant did not have a reasonable basis for believing the account
7 was not in error based on the evidence Plaintiffs provided to Defendant.
8

9 32. Defendant did not credit Plaintiffs' account for the Stolen Funds.

10 33. Defendant's conduct as set forth herein constitutes a failure to
11 investigate in good faith and a failure to establish a reasonable basis for believing
12 that Plaintiffs' account was not in error, and also constitutes a knowing and willful
13 conclusion that Plaintiffs' account was not in error when such conclusion could not
14 reasonably have been drawn from the available evidence, and for this reason
15 constitutes a violation of 1693f(e), entitling Plaintiffs to treble damages in addition
16 to all other relief sought herein. Defendant's failure to provisionally and finally
17 credit Plaintiffs' account provides an additional basis for treble damages.
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21 34. As a direct and proximate result of Defendant's violations of the
22 EFTA, Plaintiff is entitled to declaratory judgment, actual damages, statutory
23 damages, treble damages, costs and reasonable attorneys' fees.
24

25 **SECOND CLAIM FOR RELIEF**
26 **(California UCC Article 4A)**
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1 35. Plaintiffs reallege each of the foregoing paragraphs of this Complaint
2 as if fully set forth herein.

3 36. Pursuant to UCC § 4-A-202(1), “[a] payment order received by the
4 receiving bank is the authorized order of the person identified as sender if that
5 person authorized the order or is otherwise bound by it under the law of agency.”

6
7 UCC § 4-A-202(2) further provides:

8
9 If a bank and its customer have agreed that the
10 authenticity of payment orders issued to the bank in the
11 name of the customer as sender will be verified pursuant
12 to a security procedure, a payment order received by the
13 receiving bank is effective as the order of the customer,
14 whether or not authorized, if

15 (a) the security procedure is a commercially reasonable
16 method of providing security against unauthorized
17 payment orders, and

18 (b) the bank proves that it accepted the payment order in
19 good faith and in compliance with the security procedure
20 and any written agreement or instruction of the customer
21 restricting acceptance of payment orders issued in the
22 name of the customer.

23 37. Coinbase failed to establish and/or follow a commercially reasonable
24 security procedure with regard to Plaintiffs’ Account.

25 38. Specifically, Coinbase’s security procedure fails to flag and hold
26 obviously fraudulent and unauthorized transactions such as the ones at issue here.
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1 39. The unauthorized transactions on Plaintiffs' Account bore a series of
2 characteristics that, when taken together, render the transactions suspect, and likely
3 to be fraudulent.

4 40. For example, and without limitation, the transactions:
5
6 a. were entirely out of character with Plaintiffs' history of account
7 usage;
8
9 b. drained the Account balance;
10
11 c. occurred within less than 24 hours;
12
13 d. likely occurred on a new device not previously associated with
14 the Account;
15
16 e. likely occurred via a new IP address not previously associated
17 with the Account; and
18
19 f. occurred immediately after the password on the account was
20 reset.

21 41. Any commercially reasonable policy would have assessed this
22 combination of troubling factors, flagged the transactions as suspect, and held or
23 rejected the transactions as likely to be fraudulent.

24 42. Indeed, Coinbase acknowledged the suspicious and unauthorized
25 nature of these transactions based on this same information – all of which was
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1 available to it at the time of the transactions – but only after it processed the
2 transfers.

3 43. Coinbase also did not process the transfers in good faith. Specifically,
4
5 Coinbase’s willful blindness to the many badges of fraud present here constituted
6 bad faith acceptance of the unauthorized payment orders.

7 44. In sum, Coinbase violated UCC § 4-A-202 by accepting unauthorized
8
9 payment orders in connection with Plaintiffs’ Coinbase account, failing to establish
10 and/or follow commercially reasonable security procedures, and not processing the
11 transactions in good faith.

12
13 45. Plaintiffs are therefore entitled to a refund of the full amounts of the
14 unauthorized payment orders, plus interest.

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16 **THIRD CLAIM FOR RELIEF**
(California Business & Professions Code § 17200, et seq.)

17 46. Plaintiffs reallege each of the foregoing paragraphs of this Complaint
18
19 as if fully set forth herein.

20 47. Defendant engaged in unfair acts and practices with respect to its
21 services by denying transactions alleged to be unauthorized without first
22 conducting a reasonable inquiry; by denying transactions alleged to be
23 unauthorized despite finding that the transactions were unauthorized; by denying
24 transactions alleged to be unauthorized that it has no legitimate basis to conclude
25 were authorized; by denying requests to reverse unauthorized transactions without
26 notifying the accountholder of the accountholder’s right to reproductions of all
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1 documents on which it relied in reaching its decision; and by establishing sub-
2 standard security practices and procedures described herein.

3 48. The acts and practices complained of herein constitute unfair business
4 practices because they are immoral, unethical, oppressive, unscrupulous,
5 unconscionable, substantially injurious to the general public, and offensive to
6 public policy.

7 49. Defendant's acts and practices were likely to deceive Plaintiffs and
8 the public regarding their rights.

9 50. Defendant failed to completely investigate the fraudulent transactions,
10 denied transactions were fraudulent with no legitimate basis for doing so, placed
11 the burden on Plaintiffs and the general public to prove the transactions were
12 unauthorized when the law requires the opposite, and failed to inform Plaintiffs
13 and the general public of their legal rights.

14 51. The business acts and practices of Defendant constitute fraudulent
15 business practices because they are likely to deceive the public and affected
16 consumers as to their legal rights and obligations, and by use of such deception,
17 may preclude consumers from exercising legal rights to which they are entitled.

18 52. As a direct and proximate result of Defendant's acts and unfair
19 practices, Plaintiffs and the public were injured and lost money or property,
20 including but not limited to, the harm suffered as a result of fraudulent transfers
21 made their accounts with Defendant.

22 53. As a direct and proximate result of the acts and practices described
23 herein, Defendant has received and collected substantial monies or property to
24 which Defendant is not entitled. These illicit profits should be disgorged.

25 54. Defendant deals uniformly with a large volume of customers who
26 dispute unauthorized charges. For example, Defendant's misconduct as set forth
27 above is part of uniform policy and practice, as reflected in its standardized,
28

1 boilerplate form communications. Each of Defendant's deceptive acts and
2 practices set forth above therefore have a broad impact on consumers.

3 55. The harm these practices caused to Plaintiffs and the general public
4 outweigh their utility, if any.

5 56. Plaintiffs are entitled under the UCL to enjoin these acts and practices
6 and to obtain restitution of all funds obtained by Defendant by reason of and
7 through the use of these unlawful and fraudulent acts and practices. Pursuant to the
8 UCL, Plaintiffs, individually and on behalf of all members of the general public
9 who are, have been, or may be subjected to Defendant's unlawful and fraudulent
10 business acts and practices are entitled to declaratory and preliminary and
11 permanent injunctive relief prohibiting such practices in the future, and other
12 orders as may be necessary to restore to any person in interest, any money or
13 property, real or personal, which Defendant acquired by means of such unlawful,
14 unfair and fraudulent business practices.

15 57. The unlawful, unfair, and fraudulent business acts and practices of
16 Defendant described herein present a continuing threat to Plaintiffs and the public
17 in that Defendant is currently engaging in such acts and practices and will persist
18 and continue to do so unless and until an injunction is issued by this Court.

19 58. In addition, Plaintiffs are entitled to recover reasonable attorneys'
20 fees, costs, and expenses incurred in bringing this action under California Code of
21 Civil Procedure §1021.5.

22 **FOURTH CLAIM FOR RELIEF**
23 **(Common Law Conversion)**

24 59. Plaintiffs reallege each of the foregoing paragraphs of this Complaint
25 as if fully set forth herein.
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1 60. Plaintiffs have a possessory right to the funds in the Account.

2 61. Under the circumstances set forth herein, the funds constituted
3 personal property.
4

5 62. Coinbase intentionally and without authority assumed and exercised
6 control over Plaintiffs' funds.

7 63. Coinbase's dominion over the funds and interference with the funds—
8 including allowing the transfer of the Stolen Funds out of Plaintiffs' Account—was
9 in derogation of Plaintiffs' rights, including but not limited to Plaintiffs' right to
10 use the funds as they saw fit and have the funds returned to them.
11
12

13 64. Plaintiffs demanded that Coinbase return the funds, but it has not.

14 65. As a result of Coinbase's actions, Plaintiffs has suffered actual
15 damages, including but not limited to the amount of the funds converted.
16

17 **FIFTH CLAIM FOR RELIEF**
18 **(Breach of Contract)**

19 66. Plaintiffs repeat and realleges each of the foregoing paragraphs of this
20 Complaint as if fully set forth herein.

21 67. On information and belief, Coinbase had an implied duty under its
22 contract with Plaintiffs to use commercially reasonable efforts to protect
23 Plaintiffs' account from unauthorized access.
24

25 68. On information and belief, Coinbase further assumed a duty under the
26 contract to make Plaintiffs whole for any unauthorized access, conditioned upon
27
28

1 his notifying Coinbase of the unauthorized access.

2 69. By reporting the unauthorized transfers to Coinbase on the day they
3 occurred, Plaintiffs met any duty imposed by contract to provide notice of
4 unauthorized access to Coinbase.
5

6 **WHEREFORE**, Plaintiffs respectfully prays for relief as set forth below:

- 7 A. An award of actual damages, including but not limited to the amount of
8 the unauthorized charges (and all associated interest, fees and costs),
9 and emotional distress;
10
11 B. An award of statutory damages;
12
13 C. An award of punitive damages;
14
15 D. An award of treble damages;
16
17 E. An order of restitution;
18
19 F. Pre-judgment interest;
20
21 G. Attorneys' fees, costs, and expenses;
22
23 H. An order finding and declaring that Defendant's acts and practices as
24 challenged herein are unlawful, unfair, and fraudulent;
25
26 I. Injunctive relief pursuant to California Business and Professions Code
27 §17203, prohibiting Defendant from continuing its unlawful conduct,
28 including but not limited to prohibiting Defendant from (a) denying an
unauthorized transaction dispute without first conducting a reasonable

1 inquiry into the allegedly unauthorized transaction and reasonably
2 finding that the transaction was authorized; and (b) denying any request
3 to reverse allegedly unauthorized transactions without notifying the
4 accountholder of the accountholder's right to reproductions of all
5 documents on which Defendant relied in reaching its decision; and
6

7 J. Such other and further relief as the Court may deem just and proper.
8

9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs demand a trial by
11 jury as to all issues so triable.

12 RESPECTFULLY SUBMITTED and DATED this 12th day of September,
13 2023.
14

15 BARTHEL & BARTHEL, APC

16 By: /s/Nicholas Barthel
17 Nicholas Barthel, Esq.

18 SCHLANGER LAW GROUP, LLP

19 /s/ Daniel A. Schlanger
20 Daniel A. Schlanger, *Pro Hac Vice*
21 *Forthcoming*
22 Email: dschlanger@consumerprotection.net
23 SCHLANGER LAW GROUP, LLP
24 80 Broad Street, Suite 3103
25 New York, New York 10004
26 Telephone: (212) 500-6114
27 Facsimile: (646) 612-7996

28 /s/Martin Bienstock

1 Martin Bienstock, *Pro Hac Vice*
2 *Forthcoming*
3 Email: Mbienstock@BienstockPLLC.com
4 BIENSTOCK PLLC
5 1629 K St. NW,
6 Suite 300
7 Washington, DC , 20006
8 Telephone: 202-908- 6601

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Attorneys for Plaintiffs